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28 AUG 2003

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In re Application of LOOSMORE et al.

Application No.: 10/030,313

: DECISION ON

PCT No.: PCT/CA00/00811

: RENEWED PETITION

Int. Filing: 11 July 2000

:

Priority Date: 15 July 1999

:

Attorney Docket No.: 1038-1212 MIS:jb

: UNDER 37 CFR 1.47(a)

For: MULTI-COMPONENT VACCINE TO  
PROTECT AGAINST DISEASE CAUSED  
BY *HAEMOPHILUS INFLUENZAE* AND  
*MORAXELLA CATARRHALIS*

This is a decision on applicant's renewed petition under 37 CFR 1.47(a) filed in the United States Patent and Trademark Office (USPTO) on 27 June 2003, requesting the acceptance of the application without the signature of inventor Ken Sasaki on the grounds that the non-signing inventor refused to execute the declaration. Applicant also requests a three month extension of time, which is granted.

As previously stated, a petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s). Items (1) and (3) and (4) have been submitted and satisfy the requirements of 37 CFR 1.47(a).

With respect to item (2), the action taken by petitioner is now sufficient to prove that "a diligent effort" was made to contact the nonsigning inventor. Petitioner submitted an supplemental statement as to Facts under 37 CFR § 1.47(a)(2) executed by Reza Yacoob, who is a member of the Patents Department of Aventis Pasteur Limited. On 08 May 2003, Mr. Yacoob sent copy of the PCT published application to Ken Sasaki at his last known address, namely, NPS Pharmaceuticals, 6850 Goreway Drive, Mississauga, Ontario L4V 1V7, Canada, along with a Declaration and Power of Attorney document, with a request that he execute and return the

paper. A copy of the correspondence sent to Mr. Sasaki and evidence that the letter was actually delivered to Mr. Sasaki (the FedEx Track Shipment statement) was presented.

Mr. Yacoob states on 13 May 2003, he spoke to Mr. Sasaki by telephone, who confirmed that he received the documents. Mr. Sasaki indicated that he wished to review the documents before signing the declaration. On 21 May 2003, Mr. Yacoob again telephoned Mr. Sasaki and left a voice message requesting that Mr. Sasaki call with any questions or concerns and to indicate "if he would not sign the document and any reason therefor." As of the date of Mr. Yacoob's statement, 17 June 2003, Mr Yacoob has not received a return phone call or the signed declaration.

Petitioner has demonstrated that a copy of the application papers for U.S. application 10/030,313 (specification, including claims, drawings, and declaration) were presented to the nonsigning inventor for his signature, sent to his last known address. Petitioner has established that Mr. Sasaki's conduct amounts to a refusal to sign these documents.

In sum, the evidence submitted supports a finding that the nonsigning inventor refuses to sign the application for the reasons set forth above. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

### CONCLUSION

The petition under 37 CFR §1.47(a) is **GRANTED**.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 07 May 2002 and to mail a filing receipt. The application has an international filing date of 11 July 2000 under 35 U.S.C. 363, and a date of 07 May 2002 under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.

The application is being returned to the International Division for processing as the U.S. National Stage of the above-identified international application.

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